

DISTRICT COURT, WATER DIVISION NO. 2, COLORADO

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RESUME OF CASES FILED AND/OR ORDERED PUBLISHED DURING APRIL 2018  
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TO: ALL INTERESTED PARTIES

Pursuant to C.R.S. 37-92-302, you are hereby notified that the following is a resume of applications and certain amendments filed and/or ordered published during April 2018, in Water Division No. 2. The names and addresses of applicants, description of water rights or conditional water rights involved and description of ruling sought as reflected by said applications, or amendments, are as follows:

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**CASE NO. 2018CW4 - FRANKIE ANN SPICER, 14670 CR 220, Salida, CO 81201; (719) 539-3271**

Application for Simple Change in Surface Point of Diversion Pursuant to § 37-92-305(3.5), C.R.S.

**CHAFFEE COUNTY**

**Decreed water right for which change is sought:** Name of structure: Marfitano Ditch; **Date of original and all relevant subsequent decrees:** July 8, 1929; **Case No.:** 2997; **Court:** Chaffee County District Court. **Legal description of structure as described in most recent decree that adjudicated the location:** At a point whence the N ¼ corner Sec. 11, T49N, R7E of NMPM bears N 70° 29" at a distance of 826'. **Decreed source of water:** Greens Creek. **Appropriation Date:** March 1, 1914. **Total amount decreed to structure in cfs:** 1 cfs absolute. **Decreed use:** Irrigation. **Amount of water Applicant intends to change:** 1 cfs. **Detailed description of proposed change in a surface point of diversion:** This change is not combined with and does not include any other type of change of water right. There is no intervening surface diversion point or inflow between the new point of diversion and the diversion point from which this change is being made. Applicant is the sole property owner of the land (Reference Deed from Dominick to Spicer January 6, 1971 Book 371, Page 838 Deed Records, Chaffee County, Colorado) on which this change will take effect. There are no other land owners involved in this change. This water right is junior to downstream property owners/water rights. Therefore, it will not injuriously affect the owner of or persons entitled to use water under a vested water right or decreed conditional water right. **Location of the new surface point of diversion: UTM Coordinates (NAD 83, Zone 13):** Easting 0399052E, Northing 4264656N. **Street Address:** 14670 CR 220, Salida, CO 81201. **Source of UTM's:** Per Brian Sutton, Water Commissioner, District 11. Accurate to within 10 feet. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion structure, or modification to any existing diversion structure is or will be constructed:** None.

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**CASE NO. 2018CW5 - DE ENTERPRISES, LLC, Mountaindale Campground & Cabins, 2000 Barrett Road, Colorado Springs, CO 80926-9514; (719) 439-1498**

Application for Approval of Plan for Augmentation

**FREMONT COUNTY**

**2. Decreed structures to be augmented:** **Red Creek Well No. 1** (WDID 1208201, Permit 54639-F); **Case No.:** W-3553; 97CW086. **Legal Description:** 300 feet from the north section line and 2,300 feet from the east section line, NW/4 of the NE/4, Section 12, Township 17S, Range 68W, 6<sup>th</sup> P.M. (97CW086). **Appropriation Date:** 12/31/1944 (W-3553); 3/13/1997 (97CW086). **Source:** Groundwater. **Amount:** 20 gpm, absolute, limited to 5 af/yr (W-3553). 20 gpm, absolute, limited to 2.59 af/yr (97CW086). **Red Creek Well No. 2** (WDID 1208202, Permit 54640-F); **Case No.:** W-3553; 97CW086. **Legal Description:** 250 feet from the north section line and 2,450 feet from the east section line, NW/4 of the NE/4, Section 12, Township 17S, Range 68W, 6<sup>th</sup> P.M. (97CW086). **Appropriation Date:** 12/31/1944 (W-3553); 3/13/1997 (97CW086). **Source:** Groundwater. **Amount:** 25.34 gpm, absolute, limited to 5 af/yr (W-3553). 25 gpm, absolute, limited to 2.59 af/yr (97CW086). **Undecreed Structures to be Augmented:** **Bunkhouse Well** (SEO Permit 1536241. **Legal Description in UTM Format (13S NAD 83):** 504179E, 4272118N. **Source:** Groundwater. **Mountaindale Well** (SEO ID 1208396). **Legal Description in UTM Format (13S NAD 83):** 504386E, 4271099N. **Source:** Groundwater. **Mountaindale New Red Creek Well(s)** **Legal Description:** To be located within the SW/4 of the NE/4 and the NW/4 of the SE/4 of Section 12, T17S, R68W, 6<sup>th</sup> P.M. and within Fremont County parcel id no. 99604295 and adjacent to Red Creek as illustrated in application Figure No. 1. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.). Number of wells sufficient to produce 50 gallons per minute. **Source:** Groundwater. **3. Water rights to be used for augmentation:** Applicant is the lessee and contract purchaser of one share of Twin Lakes Reservoir & Canal Company stock. Applicant will use the water yielded from the water rights associated with this one share of stock to provide the augmentation water under this plan for augmentation. This share of stock represents a 1/49,588.965 proportional interest in The Twin Lakes Reservoir & Canal Company water rights. A description of the Twin Lakes Reservoir & Canal Company water rights follows: **Twin Lakes Reservoir & Canal Company Colorado River Basin Water Rights** **Decrees:** Case No. 3082, District Court, Garfield County, Colorado August 25, 1936. Case No. W-1901, District Court, Water Division 5, May 12, 1976. **Appropriation Date/Priority:** August 23, 1930, Priority: No. 431. **Source:** Roaring Fork River and its tributaries, all tributaries of the Colorado River in Water Division 5, as more fully set forth in the above-referenced decrees. **Legal Description:** This diversion system consists of collection ditches, tunnels, and flumes in Pitkin County, Colorado, on the Roaring Fork River and its tributaries. Water collected in these systems enters the Independence Pass Transmountain Diversion System Tunnel No. 1 and is conveyed to the Arkansas River basin and discharged into Lake Creek from which it enters Twin Lakes Reservoir. Tunnel No. 1 is located in the NW ¼ of Section 24, Township 11 South, Range 83 West of the 6<sup>th</sup> P.M. The legal description of Twin Lakes Reservoir is described below in the Arkansas River Water Rights section. **Use:** Direct flow and storage purposes, for

irrigation, domestic, commercial, industrial, municipal, and all beneficial uses at any site that is capable of being served by deliveries from either the discharge portal of Tunnel No. 1 into Lake Creek or from storage in Twin Lakes Reservoir. Water from this system may be used, reused, and successively used and disposed of after use. Amount: Direct flow amount for diversion through transmountain tunnels of 625 cfs with an annual limit of 68,000 acre-feet, a running ten-year limit of 570,000 acre-feet, and other limitations set forth in the Decrees. **Twin Lakes Reservoir & Canal Company Arkansas River Basin Water Rights.** Decrees: Case No. 2346, District Court, Chaffee County, Colorado, July 14, 1913. Case No. W-3965, District Court, Water Division 2, April 19, 1974. Appropriation Dates/Priorities: Twin Lakes Reservoir Priority No. 3, December 15, 1896; Twin Lakes Reservoir Priority No. 4, March 25, 1897. Source: Lake Creek and its tributaries, tributary to the Arkansas River. Use: Storage for irrigation, domestic, commercial, industrial and municipal purposes on any site in the Arkansas River Basin of Colorado below the Twin Lakes Reservoir which are capable of being served water by diversion from said Arkansas River. Amount: 54,452 acre-feet. Twin Lakes Reservoir Priority No. 3: 20,645.3 acre-feet; Twin Lakes Reservoir Priority No. 4: 33,806.7 acre-feet. Location of Twin Lakes Dam and Reservoir: In all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 30, all in Township 11 South, Range 80 West of the 6<sup>th</sup> P.M., in Lake County, Colorado, on Lake Creek, tributary to the Arkansas River. The Twin Lakes Dam axis and centerline of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West, of the 6<sup>th</sup> P.M. bears South 54°13'8" East, a distance of 3808.10 feet, as more particularly described in the decree in Civil Action No. 5141, District Court, Chaffee County, Colorado. Capacity of Reservoir: 54,452 acre-feet (Twin Lakes Reservoir & Canal Company's portion). **4. Does the Applicant intend to change a water right to provide a source of augmentation:** No. **5. Statement of plan for augmentation:** The Applicant is owner of the Mountaindale Campground & Cabins (Mountaindale). Mountaindale is located in Fremont County at 2000 Barrett Road, Colorado Springs, CO 80926. Water uses at Mountaindale are currently supplied by water produced from Red Creek Well Nos. 1 & 2 as described above. These wells are located adjacent to Red Creek, a tributary of Beaver Creek, a tributary of the Arkansas River. Additional water is trucked from municipal supplies as required to meet peak demands. Diversions under the Red Creek Well Nos. 1 & 2 are currently operated under a plan for augmentation decreed in Case No. 97CW086. Due to existing and planned facility expansion, the Applicant is seeking an additional plan for augmentation for Mountaindale. The Applicant proposes to provide water for up to 65 additional campsites, up to 2 additional laundry/bath facilities, a swimming pool and a limited amount of currently unallocated water use which may include physical water supplies to nearby residences under this plan. Water supplies under this plan are proposed to be diverted in combination from the well structures listed in application section no. 2. Projected diversions under this plan for augmentation are 6.42 acre-feet annually. Well diversion rates under this plan may be up to 50 gallons per minute. Augmentation water is to be supplied from that yielded from one share of Twin Lakes Reservoir & Canal Company stock. Total depletions under this plan are projected to be up to 0.73 acre-feet annually. Depletions from this plan will affect the Arkansas River at approximately this river's confluence with Beaver Creek in Fremont County. Augmentation water will be provided timely to this

river location from Twin Lakes Reservoir releases. Projected monthly depletions at this location are 0.06 acre-feet. **Does the plan for augmentation include an exchange that the Applicant desires to adjudicate?** No. The Applicant will comply with the by-laws of the Twin Lakes Reservoir & Canal Company. **6. Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:** Applicant.

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**CASE NO. 2018CW3027 - BRUCE J. CAREY AND KRISTIE L. CAREY, 19625 Drennan Road, Colorado Springs, CO 80928.** (Please provide all pleadings and correspondence to their attorney, Ryan W. Farr of Monson, Cummins & Shohet, LLC, 13511 Northgate Estates Drive., Ste. 250, Colorado Springs, CO 80921 (719) 471-1212).

Application for Underground Water Rights and Adjudication of Denver Basin Groundwater

**EL PASO COUNTY, COLORADO**

Applicants are seeking an adjudication quantifying the amount of Denver Basin groundwater underlying their property. **Application for Underground Water Rights.**

**Property Description.** Applicants' property is located in Section 17, the N1/2 of the NE1/4, the SW1/4 of the NE1/4, and the NW1/4 of the SE1/4 of Section 20, Township 15 South, Range 63 West of the 6<sup>th</sup> P.M., County of El Paso, State of Colorado, which contains approximately 800 acres, more or less as shown on Exhibit A to the Application ("Applicants' Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Legal**

**Description of Existing Wells:** Division of Water Resources Well Permit No. 5159 is an exempt stock watering well on the Applicants' Property located in the NE1/4 of the NW1/4 of Section 17, Township 15 South, Range 63 West of the 6<sup>th</sup> P.M. This well is located approximately at UTM coordinates NAD83 Zone 13 – Easting: 545923, Northing: 4289166. Division of Water Resources Well Permit No. 114702 is an exempt domestic well on the Applicants' Property located in NE1/4 of the NE1/4 of Section 17, Township 15 South, Range 63 West of the 6<sup>th</sup> P.M. This well is located approximately at UTM coordinates NAD83 Zone 13 – Easting: 546644, Northing: 4289223. **Water**

**Source.** The groundwater in the Laramie-Fox Hills aquifer underlying Applicants' Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., augmentation requirements for not-nontributary withdrawals from the Laramie-Fox Hills aquifer will require the replacement of actual stream depletions to the extent necessary to prevent any injurious effect; however, any such well constructed to the Laramie-Fox Hills aquifer that is more than one mile from any point of contact between any natural stream including its alluvium on which water rights would be injuriously affected by any stream depletion, and any such aquifer, the decrees must provide for the replacement to the affected stream system or systems of a total amount of water equal to four percent of the amount of water withdrawn on an annual basis. **Estimated Rates of Withdrawal and Ground Water Available.** Estimated Rates of Withdrawal. The actual pumping rates for any well constructed on the property will vary according to aquifer conditions and well production capabilities and any limitations imposed pursuant to a subsequently

entered augmentation plan. The Applicants request the right to withdraw groundwater at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed will be determined by topography and actual aquifer conditions. Estimated Annual Average Amounts of Groundwater Available. Applicants request an absolute water right for the withdrawal of all legally available groundwater in the Laramie-Fox Hills aquifer underlying the Applicants' Property. Said amount may be withdrawn over the 100-year life of the aquifers as set forth in § 37-90-137(4)(b)(I), C.R.S. Applicants estimate that the following values and average annual amounts are representative of the Laramie-Fox Hills aquifer underlying the Applicants' Property:

Aquifer	Average Saturated Thickness (Feet)	Total Water Adjudicated (Acre Feet)	Average Annual Withdrawal (Acre Feet)
Laramie-Fox Hills (NT)	131.2	16,380	141.8 <sup>1</sup>

Decreed amounts may vary based upon the State's Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicants further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from the aquifer. **Requested Uses:** The Applicants requests the right to use the ground water for beneficial uses upon the Applicants' Property consisting of domestic, commercial, indoor and outdoor irrigation, stock water, municipal, industrial, recreation, wildlife, wetlands, fire protection, and for storage and augmentation associated with such uses. Provided, however, Applicants shall only be entitled to construct a well or use water from the not-nontributary Laramie-Fox Hills aquifer for non-exempt purposes pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifer in accordance with § 37-90-137(9)(c.5), C.R.S. **Well Fields:** Applicants request that they be permitted to produce the full legal entitlement from the Laramie-Fox Hills aquifer underlying Applicants' Property through any combination of wells. Applicants therefore request that these wells be treated as a well field. **Averaging of Wells:** Applicants request that they be entitled to withdraw an amount of ground water in excess of the average annual amount, so long as the sum of the total withdrawals from all the wells does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which the Applicants are entitled to withdraw from the Laramie-Fox Hills aquifer underlying the Applicants' Property. **Name and Address of Owner of Land Upon Which Wells are to Be Located:** The land upon which the current wells and any future wells may be constructed is owned by the Applicants. **Remarks.** Additional remarks are as follows: Applicants request a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by not-nontributary wells upon an entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. The Court will retain jurisdiction over this matter to

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<sup>1</sup> The average annual amount to be withdrawn has been decreased by 22 acre-feet in order to maintain the exempt status of the two currently constructed wells and also to retain the ability to construct up to an additional 20 exempt wells on the Applicants' Property.

provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Any wells constructed pursuant to a decree herein as may be authorized by future decree for a plan for augmentation shall be installed and metered as reasonably required by the by the State Engineer. Each well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. The Applicants intend to waive the 600 feet well spacing requirement for any wells to be located upon the Applicants' Property. Applicants will comply with any lienholder notice provisions set forth in C.R.S. §37-92-302(2)(b) and §37-90-137(4)(b.5)(I), and such notice will be sent within 10 days of the filing of this application.

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**CASE NO. 2018CW3028 - JAMES AND JEANNIE MUTH, 6590 Walker Road, Colorado Springs, CO 80908** (Please address all pleadings and correspondence regarding this matter to Applicants' attorneys: James J. Petrock and Bradford R. Benning, Petrock & Fendel, P.C., 700 17<sup>th</sup> Street, #1800, Denver, CO 80202; (303) 534-0702)

Application for Underground Water Rights from Nontributary and Not Nontributary Sources and for Approval of Plan for Augmentation, in the Nontributary Arapahoe and Laramie-Fox Hills and the Not Nontributary Dawson and Denver Aquifers

**EL PASO COUNTY**

5 acres being Lots 2 and 3, Block 2, Green Mountain Ranch Estates, located in the NW1/4SW1/4 of Section 33, T11S, R67W of the 6th P.M., El Paso County, as shown on Attachment A to the Application ("Subject Property"). (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.)

**Source of Water Rights:** The Dawson and Denver aquifers are not nontributary as described in Sections 37-90-103(10.7), C.R.S., and the Arapahoe and Laramie-Fox Hills aquifers are nontributary as described in Section 37-90-103(10.5), C.R.S. **Estimated**

**Amounts:** Dawson: 1.2 acre-feet, Denver: 1.2 acre-feet, Arapahoe: 2.6 acre-feet, Laramie-Fox Hills: 1.2 acre-feet. **Proposed Use:** Domestic, commercial, irrigation,

livestock watering, fire protection, and augmentation purposes, including storage, both on and off the Subject Property. **Groundwater to be augmented:** All of the available Dawson aquifer groundwater as requested herein. **Water rights for augmentation:**

Return flows from the use of not nontributary and nontributary groundwater and direct discharge of nontributary ground water. **Statement of plan for augmentation:** The Dawson aquifer water will be used on the Subject Property for in house use in one or two residences, irrigation of home lawn, garden, and trees, and stockwatering, through one or two individual wells. Return flow from in house and irrigation use will be approximately 90% and 15% of that use, respectively. During pumping Applicants will replace actual depletions to the affected stream system pursuant to Section 37-90-

137(9)(c.5), C.R.S. Depletions occur to the Hay Creek stream system. Return flows accrue to the Arkansas River stream systems and those return flows are sufficient to replace actual depletions while the subject groundwater is being pumped. Applicants will reserve an equal amount of nontributary groundwater underlying the Subject Property to meet post pumping augmentation requirements. Further, Applicant prays

that this Court grant the application and for such other relief as seems proper in the premises.

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**CASE NO. 2018CW3029, Water Division 2, and CASE NO. 2018CW3067, Water Division 1 - PAUL ALEXANDER PICKERT, 6950 E. Chenango Ave., Apt 300, Denver, CO 80237.** (Please send all pleadings and correspondence in care of Attorneys Ryan W. Farr and Brian G. Sheldon of Monson, Cummins & Shoheit, LLC, 13511 Northgate Estates Drive, Suite 250, Colorado Springs, CO 80921 (719) 471-1212).

Application for Adjudication of Denver Basin Groundwater and for Approval of Plan for Augmentation

**EL PASO COUNTY.**

Applicant seeks to utilize up to one well on an approximately 5.21-acre tract of land to provide water service to a single family dwelling thereon consisting of many uses including domestic uses, landscape and garden irrigation, greenhouse irrigation, stock watering, and equipment and structure washing. Applicant seeks to quantify the Denver Basin groundwater underlying the Applicant's Property, and for approval of a plan for augmentation. **Property Description.** Applicant's property is located in the SE1/4 of the NW1/4 of Section 15, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, specifically described as Lot 4, Block 2 of the Willow Springs Estates which contains approximately 5.21 acres, more or less ("Applicant's Property"). See Exhibit A attached to the Application for a general location map. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) **Existing Well Permit.** There is currently a well permit for a yet-to-be constructed well to the Denver aquifer to be located in the SE1/4 of the NW1/4 of Section 15, Township 11 South, Range 65 West of the 6<sup>th</sup> P.M., approximately 2,400 feet from the north section line and 1,800 feet from the east section line, El Paso County, Colorado, Division of Water Resources Permit No. 301396. **Water Source. Not-Nontributary.** The ground water to be withdrawn from the Dawson aquifer of the Denver Basin underlying Applicant's Property is not-nontributary. Pursuant to § 37-90-137(9)(c.5), C.R.S., the augmentation requirements for wells in the Dawson aquifer will require the replacement of actual stream depletions. **Nontributary.** The groundwater that will be withdrawn from the Denver, Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin underlying the Applicant's Property is nontributary. **Estimated Rates of Withdrawal.** Pumping from any well on Applicant's Property will not exceed 100 g.p.m. The actual pumping rate for any well will vary according to aquifer conditions and well production capabilities. Applicant requests the right to withdraw ground water at rates of flow necessary to withdraw the entire decreed amounts. The actual depth of each well to be constructed within the respective aquifers will be determined by topography and actual aquifer conditions. **Estimated Average Annual Amounts of Ground Water Available.** Applicant requests a vested right for the withdrawal of all legally available ground water in the Denver Basin aquifers underlying the Applicant's Property. Applicant estimates that the following values and average annual amounts are representative of the Denver Basin aquifers underlying Applicant's Property:

Groundwater Quantification								
Elevation 7440		Acres 5.21		SE ¼ NW ¼ Sec 15 T11S R65W				
Denver Basin Aquifer	Elevation (ft amsl)		Net Sand (ft)	Depth (feet)		Total (AF)	100 Year (AF)	300 Year (AF)
	Bottom	Top		Bottom	Top			
Dawson (NNT)	6400	7440	485	1040	0	505	5.05	1.7
Denver (NT)	5510	6340	390	1930	1100	345	3.45	-
Arapahoe (NT)	4950	5500	265	2490	1970	235	2.35	-
Laramie Fox Hills (NT)	4330	4620	190	3110	2820	149	1.49	-

Decreed amounts may vary based upon the State’s Determination of Facts. Pursuant to § 37-92-305(11), C.R.S., the Applicant further requests that the Court retain jurisdiction to finally determine the amount of water available for appropriation and withdrawal from each aquifer. **Requested Uses.** The Applicant requests the right to use the ground water for beneficial uses upon the Applicant’s Property consisting of domestic, commercial, indoor and outdoor irrigation, stock watering, recreation, wildlife, wetlands, fire protection, equipment and structure washing, and also for storage and augmentation purposes associated with such uses. Applicant also requests that the nontributary water may be used, reused, and successively used to extinction, both on and off the Applicant’s Property subject, however, to the requirement of § 37-90-137(9)(b), C.R.S., that no more than 98% of the amount withdrawn annually shall be consumed. Applicant may use such water by immediate application or by storage and subsequent application to the beneficial uses and purposes stated herein. Provided, however, Applicant shall only be entitled to construct a well or use water from the not-nontributary Dawson aquifer pursuant to a decreed augmentation plan entered by this Court, covering the out-of-priority stream depletions caused by the use of such not-nontributary aquifers in accordance with § 37-90-137(9)(c.5), C.R.S. **Well Fields.** Applicant requests that he be permitted to produce the full legal entitlement from the Denver Basin aquifers underlying Applicant’s Property through any combination of wells, should additional wells be approved in the future. Applicant request that these wells be treated as a well field. **Averaging of Withdrawals.** Applicant requests that he be entitled to withdraw an amount of ground water in excess of the average annual amount decreed to the aquifers beneath the Applicant’s Property, so long as the sum of the total withdrawals from the aquifers does not exceed the product of the number of years since the date of issuance of the original well permit or the date of entry of a decree herein, whichever comes first, multiplied by the average annual volume of water which Applicant is entitled to withdraw from the aquifers underlying the Applicant’s Property. **Name and Address of Owner of Land Upon Which Wells are to Be Located.** The land upon which the wells are and will be located is owned by the Applicant. **Structure to be Augmented.** The structure to be augmented is a yet-to-be constructed well to the not-nontributary Dawson aquifer along with any replacement along with and replacement well that may subsequently be constructed (“Pickert Well No. 1”). **Water Rights to be Used for Augmentation.** The water rights to be used for augmentation during pumping are the return flows resulting from the pumping of the not-



nontributary Dawson aquifer from Pickert Well No. 1 together with water rights from the nontributary Denver aquifer for any injurious post pumping depletions. **Statement of Plan for Augmentation.** Applicant wishes to provide for the augmentation of stream depletions caused by pumping of the not-nontributary Dawson aquifer proposed herein. Water use criteria and their consumptive use component for replacement of actual depletions for the lot is estimated as follows: **Use.** The well will pump a maximum of 1.0 acre-feet of water per year from the Dawson aquifer for up to 300 years. Such use shall be a combination of household use, irrigation of lawn and garden, greenhouse irrigation, equipment and structure washing, and the watering of horses, chickens, or equivalent livestock. **Depletions.** It is estimated that maximum stream depletions over a 300 year pumping period for the Dawson aquifer amounts to approximately 18.5% percent of pumping. Maximum annual depletions for total residential pumping from all wells is therefore 0.185 acre-feet in year 300. Should Applicant's pumping be less than the 1.0 acre-foot described herein, resulting depletions will be correspondingly reduced thereby maintaining proper replacement by non-evaporative septic return flows from household use as described below. **Augmentation of Depletions During Pumping.** Pursuant to § 37-90-137(9)(c.5), C.R.S., Applicant is required to replace actual stream depletions attributable to pumping of augmented wells to the Dawson aquifer. Wastewater from in-house uses will be treated via a non-evaporative septic system. As such, depletions during pumping will be effectively replaced by residential return flows from non-evaporative septic systems. The annual consumptive use for non-evaporative septic systems is 10% per year per residence. At a household use rate of 0.25 acre-feet per residence per year, 0.225 acre-feet is replaced to the stream system per year as the house utilizes a non-evaporative septic system. Thus, during pumping for 300 years at a rate of 1 acre-foot per year, maximum annual stream depletions of 0.185 acre-feet will be adequately augmented. **Augmentation for Post Pumping Depletions.** For the replacement of any injurious post pumping depletions which may be associated with the use of the Pickert Well No. 1, Applicant will utilize non-evaporative septic return flows and irrigation return flows from the subsequent usage of the Denver aquifer. Additionally, Applicant will reserve the remainder of the post pumping obligation from the Arapahoe and may also utilize water from the Laramie-Fox Hills aquifer as a replacement source if needed. Applicant also reserves the right to substitute other legally available augmentation sources for such post pumping depletions upon further approval of the Court under its retained jurisdiction. Applicant reserves the right in the future under the Court's retained jurisdiction to prove that post pumping depletions will be noninjurious. Upon entry of a decree in this case, Applicant will be entitled to apply for and receive a well permit for Pickert Well No. 1 for the uses in accordance with this Application and otherwise in compliance with § 37-90-137, C.R.S. **Remarks.** This Application was filed in both Water Divisions 1 and 2 because depletions from the pumping of the Dawson aquifer may occur in both the South Platte and the Arkansas River systems. The return flows set forth herein will accrue to tributaries of the South Platte River system where the majority of such depletions will occur, and it is Applicant's intent to consolidate the instant matter with pending Division 1 application in Water Division 1 upon completion of publication. Applicant requests that the total amount of depletions to both the South Platte River and the Arkansas River systems be replaced to the South Platte River as set forth herein, and for a finding that those replacements

are sufficient. Applicant requests a finding that they have complied with § 37-90-137(4), C.R.S., and that the ground water requested herein is legally available for withdrawal by the requested not-nontributary Dawson aquifer well upon the entry of a decree approving an augmentation plan pursuant to § 37-90-137(9)(c.5), C.R.S. The term of this augmentation plan is for 300 years, however the length of the plan for a particular well may be extended beyond such time provided the total plan pumping allocated thereto is not exceeded. Post pumping stream depletions accrue to a particular well or wells only to the extent related to that well's actual pumping. The Court will retain jurisdiction over this matter to provide for the adjustment of the annual amount of ground water withdrawals to be allowed in order to conform to actual local aquifer characteristics from adequate information obtained from well drilling or test holes. Pursuant to § 37-90-137, C.R.S. upon approval of the plan for augmentation requested herein, Applicant will file an application with the State Engineer's office to permit Pickert Well No. 1 for operation under the plan for augmentation. Applicant request a finding that vested water rights of others will not be materially injured by the withdrawals of ground water and the proposed plan for augmentation. All wells shall be installed and metered as reasonably required by the State and Division Engineer. Any well must be equipped with a totalizing flow meter and Applicant shall submit diversion records to the Division Engineer on an annual basis or as otherwise requested by the Division Engineer. Applicant shall also provide accountings to the Division Engineer and Water Commissioner as required by them to demonstrate compliance under this plan of augmentation. Applicant intends to waive the 600-foot well spacing requirement for any wells to be located upon the Applicant's Property. Applicant will comply with any lienholder notice provisions set forth in § 37-92-302(2)(b), C.R.S. and § 37-90-137(4)(b.5)(I), C.R.S. and such notice will be sent within 14 days of the filing of this application.

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**CASE NO. 2018CW3030; Previous Case Nos. 1997CW172, 2005CW23 and 2011CW59 - ARKANSAS RIVER RANCH HOMEOWNERS ASSOCIATION, INC., 2738 Pine Street, Boulder, CO 80302** (Please address all pleadings and correspondence regarding this matter to Applicant's attorneys: Paul F. Holleman and John D. Buchanan, Buchanan Sperling & Holleman, P.C., 1525 Spruce Street, Suite 200, Boulder, CO 80302; (303) 431-9141)

Application for Finding of Reasonable Diligence in Development of Water Rights

**LAKE COUNTY**

**2. Name of Structure.** Arkansas River Ranch Lower Pond Water Right. A. **Original Decree.** Case No. 97CW172, Water Division No. 2, entered on November 26, 2011 ("97CW172 Decree"). B. **Subsequent Decrees.** Case No. 05CW23, Water Division No. 2, entered on September 21, 2005; and Case No. 11CW59, Water Division No. 2, entered on April 9, 2012 (the "Diligence Decrees"). C. **Legal Description of Point of Diversion.** The pond is located on the channel of Spring Creek, a tributary of the Arkansas River, in the SW1/4 of Section 35, Township 10 South, Range 80 West of the 6th P.M. The location is illustrated on the map attached to the Application as Exhibit A. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) D. **Source.** Water tributary to Spring Creek and the Arkansas River. E. **Amount.** 3 acre-feet, with the right to fill and refill, conditional. F.

**Appropriation Date.** December 30, 1997. G. **Uses.** Recreation, fire protection, and fish and wildlife purposes. The water will be used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the pond. The water will be fully consumed during the first use of the water. Water will also be diverted through the pond for fish and wildlife enhancement and water quality improvement purposes. 3. **Exchange Right.** A. **Original Decree.** 97CW172 Decree entered on November 26, 2011. B. **Subsequent Decrees.** The Diligence Decrees. C. **Location.** The upper end of the exchange reach is the Arkansas River Ranch Lower Pond, described above in paragraph 3. The lower end of the exchange reach is the confluence of the outlet of Twin Lakes Reservoir on Lake Creek with the Arkansas River in the SW 1/4 of Section 24, Township 11 South, Range 80 West of the 6th P.M. D. **Source.** The following water rights will be substituted and exchanged for the water depleted from the Arkansas River pursuant to the plan for augmentation described in the Decree entered in Case No. 97CW172 on March 30, 1999: (a) the fully consumable portion of the Twin Lakes Water Rights; (b) the fully consumable portion of the After Acquired Water Rights (as defined in the 97CW172 Decree); (c) at such times when the Arkansas River Ranch Upper Pond and Lower Pond water rights are out of priority and there are no Twin Lakes Water Rights or After Acquired Water Rights available for release to the Arkansas River for replacement of depletions, the Arkansas River Ranch Upper Pond and Lower Pond water rights shall be released from the Arkansas River Ranch Upper Pond and Lower Pond into Spring Creek, a tributary of the Arkansas River, as necessary to replace the depletions associated with the operation of the ponds; (d) at such times when the Arkansas River Ranch Upper Pond and Lower Pond water rights are out of priority and there are Twin Lakes Water Rights or After Acquired Water Rights available and released to the Arkansas River, the Twin Lakes Water Rights or After Acquired Water Rights in the Arkansas River may be substituted and exchanged in priority for water diverted out of Spring Creek, a tributary of the Arkansas River Ranch Upper Pond and Lower Pond. E. **Amount.** 0.0054 cfs, absolute; 0.9946 cfs, conditional. F. **Appropriation Date.** November 14, 1996. G. **Uses.** The water will be used for immediate application to beneficial use, for storage and subsequent application to beneficial use, and for replacement of depletions associated with the operation of the pond. The water will be fully consumed during the first use of the water. Water will also be used in the pond for fish and wildlife enhancement and water quality improvement purposes. 4. **Detailed outline of work performed to complete application of water to beneficial use.** These water rights are associated with an existing structure that has been filled for beneficial use pursuant to the augmentation plan approved in the 97CW172 Decree. Applicant's work performed to complete the application of water to beneficial use consists of actually filling and using the pond and waiting until the water rights are in priority so that the use of such water can be credited to the appropriative water rights, as opposed to the augmentation plan, and thus made absolute. The foregoing description is not intended to be all-inclusive but is merely illustrative of continued diligence in development of the water rights described in this application. 5. **Name(s) and address(es) of owner(s) or reputed owners of the land upon which any new diversion or storage structure or modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon**

**which water is or will be stored.** Applicant. **WHEREFORE,** Applicant requests that the Court enter an order finding and determining that Applicant's actions constitute a sufficient demonstration of reasonable diligence in attempting to put the conditional water rights described herein to beneficial use, and further requests that the Court enter a decree finding and determining that Applicant has exercised reasonable diligence in the development of the described water rights and that said water rights shall be continued.

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**CASE NO. 2018CW3031; Previous Case Nos. 1999CW170(A) and 2011CW40 - THE CITY OF AURORA, COLORADO, a municipal corporation of the Counties of Adams, Arapahoe, Denver, Douglas and Jefferson, acting by and through its Utility Enterprise ("Aurora" and "Applicant"), 15151 East Alameda Avenue, Suite 3600, Aurora, Colorado 80012-1555** (Please address all pleadings and correspondence regarding this matter to Applicant's Attorneys: John M. Dingess and Teri L. Pettit, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Suite 500, Denver, Colorado 80237-1829, phone (303) 779-0200, fax (303) 779-3662, [mail@hrodllaw.com](mailto:mail@hrodllaw.com), [jdingess@hrodllaw.com](mailto:jdingess@hrodllaw.com), [poolteri@hrodllaw.com](mailto:poolteri@hrodllaw.com))

Application for Finding of Reasonable Diligence and to Make Absolute Portions of Conditional Water Rights

**LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES.**

**2. Name of Structures (shown on Exhibit A to the Application):** (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) 2.1. Pueblo Reservoir. The Pueblo Reservoir is located in all or portions of Sections 7, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 in Township 20 South, Range 66 West, and Sections 1, 2, 3, 4, 5, 9, 10 and 11, in Township 21 South, Range 66 West, and Sections 5, 8, 9, 13, 14, 15, 16, 22, 23 and 25, in Township 20 South, Range 67 West, all in the 6th Principal Meridian in Pueblo County, Colorado. The Pueblo Reservoir Dam axis and the center line of the Arkansas River intersect at a point in Section 36, Township 20 South, Range 66 West of the 6th Principal Meridian, from which the Northeast corner of said Section bears North 61° 21' 20" East, a distance of 2,511.05 feet, all more particularly described in the decree in Case No. B-42135, District Court, Pueblo County, Colorado, dated June 25, 1962. 2.2. Lake Henry / Lake Meredith Outlet Canal ("Outlet Canal"). Waters released from Lake Henry or Lake Meredith Reservoirs are carried through the Lake Meredith Reservoir Outlet Canal to a point in the South Half of Section 21, Township 22 South, Range 57 West of the 6th P.M., where they can be released to the Holbrook Canal and/or discharged into the Fort Lyon Storage Canal whence they are carried southeasterly approximately one-half mile in the Fort Lyon Storage Canal to a point at which they either continue in said Fort Lyon Storage Canal or are discharged through a headgate on its Southerly bank in the SW<sup>1</sup>/<sub>4</sub> of Section 22, Township 22 South, Range 57 West of the 6<sup>th</sup> P.M., in Crowley County, Colorado whence they travel South-Southeast approximately one mile to discharge into the Arkansas River in the NW <sup>1</sup>/<sub>4</sub> of the SE <sup>1</sup>/<sub>4</sub> of Section 27, Township 22 South, Range 57 West of the 6th P.M., in Otero County, Colorado. 2.3. Arkansas Gravel Pit Reservoir ("AGPR"). To be located in the S<sup>1</sup>/<sub>2</sub> of Section 34; and a portion of the SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> of Section 35, Township 20 South, Range 63 West; and a portion of the N<sup>1</sup>/<sub>2</sub> of Section 3, Township 21 South, Range 63 West of

the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¼ SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¼ SE ¼ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado.

2.4. Twin Lakes Reservoir. The Reservoir is located in all or portions of Sections 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 30 in Township 11 South, Range 80 West of the 6th Principal Meridian, in Lake County, Colorado. Twin Lakes Dam axis and center line of Lake Creek intersect at a point whence the SE corner of Section 23, Township 11 South, Range 80 West of the 6th Principal Meridian bears South 54° 13' 8" East, a direction of 3,803.10 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County, Colorado), dated July 9, 1969.

2.5. Turquoise Reservoir. Turquoise Reservoir is located in all or portions of Sections 7, 8, 17, 18, 19 and 20, Township 9 South, Range 80 West, and Sections 10, 11, 12, 13, 14 and 15, Township 9 South, Range 81 West, all from the 6<sup>th</sup> P.M., in Lake County, Colorado. The Turquoise Reservoir Dam axis and the centerline of Lake Fork Creek intersect at a point whence the Northwest corner of Section 16, Township 9 South, Range 80 West of the 6<sup>th</sup> P.M., bears North 44° 46' 18" East a distance of 10,344.35 feet, all as more particularly described in the decree in Civil Action No. 5141 (District Court, Chaffee County).

2.6. Clear Creek Reservoir. Clear Creek Reservoir is located in all or part of Sections 7 and 8, Township 12 South, Range 79 West, and Section 12, Township 12 South, Range 80 West, all of the 6th Principal Meridian in Chaffee County, Colorado. The Clear Creek Reservoir Dam axis and the centerline of Clear Creek intersect at a point whence the South corner of Section 8, Township 12 South, Range 79 West, 6th Principal Meridian bears South 27° West a distance of 2,255 feet.

2.7. Otero Pump Station Arkansas River Intake. The Otero Pump Station diverts water from the Arkansas River in Chaffee County, Colorado approximately at a point that bears North 30° West a distance of 6,180 feet to the Northeast corner of Section 6, Township 12 South, Range 79 West of the 6th Principal Meridian.

2.8. Lake Meredith Reservoir. Lake Meredith Reservoir is located in all or portions of Sections 15, 16, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32 and 33 in Township 21 South, Range 56 West, Sections 1, 6 and 12 in Township 22 South, Range 57 West, and in Sections 24, 25 and 36 in Township 21 South, Range 57 West, all from the 6<sup>th</sup> P.M., in Crowley County, Colorado. Lake Meredith Reservoir dam axis and the centerline of the outlet canal intersect at a point located in the NW1/4 of the SW1/4 of Section 12, Township 22 South, Range 57 West of the 6th P.M., at a point from which the West Quarter Corner of said Section 12 bears North 27° 14' West a distance of 564.30 feet.

2.9. Lake Henry Reservoir. Lake Henry Reservoir is located in all or portions of Sections 31 and 32, Township 20 South, Range 56 West, and Sections 5 and 6, Township 21 South, Range 56 West, all from the 6<sup>th</sup> P.M., in Crowley County, Colorado; the primary outlet works for Lake Henry Reservoir are located in the South Half of said Section 6 and the Lake Henry Reservoir dam axis and the centerline of the outlet canal intersect at a point on the West line of the Southeast Quarter of said Section 6 a distance of 512 feet South of the center of Section 6, Township 21 South, Range 56 West of the 6<sup>th</sup> P.M., in Crowley County, Colorado.

**3. Description of Conditional Water Rights:**

3.1. Date of Original Decree:

June 27, 2005, Case No. 99CW170(A), District Court Water Division 2, Colorado (“Original Decree”). 3.2. Date of Subsequent Diligence Decree: April 20, 2012, Case No. 11CW040, District Court, Water Division No. 2, Colorado. 3.3. Legal Descriptions: See Paragraph 2, above. 3.4. Sources of Exchange Water: 3.4.1. The water to be exchanged pursuant to the rights that are the subject of this Application is the historical consumptive use water diverted and stored in Pueblo Reservoir, diverted at the Excelsior Ditch and stored in the AGPR, and/or diverted at the Colorado Canal Headgate and stored in Lake Henry Reservoir or Lake Meredith Reservoir under 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Application (hereinafter, the “Subject Rocky Ford Ditch Water Right”) is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchanges that are the subject of the Original Decree or this Application. 3.4.2. The Subject Rocky Ford Ditch Water Right was the subject of the Decree entered on January 28, 2004 in Water Division 2, Case No. 99CW169(A) which case changed, *inter alia*, uses and points of diversion for Applicant’s share of the subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant’s share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. The terms and conditions of the decree in Case No. 99CW169(A) pertaining to revegetation and dry-up are relevant to this proceeding in that such terms and conditions temporarily limit the volume of water Aurora may divert and store in Pueblo Reservoir, AGPR, Lake Henry or Lake Meredith. Aurora’s right to operate the exchange decreed under the Original Decree is conditioned upon full compliance with the terms and conditions of the decree in Case No. 99CW169(A). 3.5. Exchange Reaches and Amounts: 3.5.1. From the Lake Henry/Lake Meredith Outlet Canal (“Outlet Canal”) to the following points: 3.5.1.1. Twin Lakes Reservoir, 500 cfs; 3.5.1.2. Turquoise Reservoir, 350 cfs; 3.5.1.3. Clear Creek Reservoir, 250 cfs; 3.5.1.4. Otero Pump Station Arkansas River Intake, 165 cfs; 3.5.2. From the Arkansas Gravel Pit Reservoir (“AGPR”) Outlet to the Arkansas River to the following points: 3.5.2.1. Pueblo Reservoir, 500 cfs; 3.5.2.2. Twin Lakes Reservoir, 500 cfs; 3.5.2.3. Clear Creek Reservoir, 250 cfs; 3.5.2.4. Otero Pump Station Arkansas River Intake, 165 cfs; 3.5.3. From Pueblo Reservoir to the following points: 3.5.3.1. Twin Lakes Reservoir, 500 cfs; 3.5.3.2. Turquoise Reservoir, 350 cfs; 3.5.3.3. Clear Creek Reservoir, 250 cfs; 3.5.3.4. Otero Pump Station Arkansas River Intake, 165 cfs; 3.5.4. The maximum rates of exchange into each specific receiving reservoir or facility shall be limited to the following: Turquoise Reservoir, 350 cfs; Twin Lakes Reservoir, 500 cfs; Clear Creek Reservoir, 250 cfs; Otero Pump Station, 165 cfs; Pueblo Reservoir, 500 cfs. The above stated maximum exchange rates shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case

Nos. 87CW63, 99CW170(B), and 01CW145. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63 and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed. 3.5.5. Amounts Previously Decreed Absolute: 75 cfs of the appropriative right of exchange from Pueblo Reservoir to Twin Lakes Reservoir, as described in paragraph 3.5.3.1, above, was made absolute in WD-2, Case No. 11CW40. 3.6. Appropriation Date: December 28, 1999. 3.7. Uses: The water exchanged pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally consumptively used, successively used, reused and captured for later use. 3.7.1. Direct flow and storage for use, reuse, and successive use to extinction, to the extent historically consumed. 3.7.2. Municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in stream uses, if any, snowmaking, revegetation, storage and maintenance of storage reserves, and to augmentation, exchange and replacement purposes. The water may be totally consumptively used, successively used, reused and recaptured for later use. **4. Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriations and Application of Water to a Beneficial Use as Conditionally Decreed.** During the diligence period of May 2012 through April 2018, Aurora performed the following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (Expenditure numbers are rounded to the nearest \$1000): 4.1. Project Specific Efforts: Aurora has done at least the following project specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 99CW170(A) to beneficial use: 4.1.1. Revegetation: Aurora has expended at least \$1,233,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, actual revegetation and weed control costs, as well as farm equipment purchases, office overhead and personnel costs, under Case No. 83CW18. Aurora also expended an additional \$982,000 for revegetation and continued farming of historically irrigated lands pursuant to the decree in Case No. 99CW169(A). On June 3, 2014, Aurora entered into an Intergovernmental Agreement with Otero County to clarify between the parties certain terms contained in the 99CW169(A) decree regarding revegetation. 4.1.2. Payment for Rocky Ford Ditch shares: Aurora spent more than \$2,182,000 during this diligence period for repayment of bonds and payments to note sellers, including principal and interest that were issued or refunded for purchase of Applicant's share of the Subject Rocky Ford Ditch Company shares that are the source of the water for the exchanges herein. 4.1.3. Otero IGA: Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001 under which Amendment Aurora agreed to make annual payments to Otero County concerning the Rocky Ford Ditch shares that are the source for the subject conditional water right. During this diligence period, Aurora made payments of over \$209,000. 4.1.4. Pueblo Reservoir Storage: During this diligence period, Aurora paid the Bureau of Reclamation more than \$3,328,000 for storage use of Pueblo Reservoir necessary to operate these exchanges,

for long-term storage as well as for consultants and legal fees for the long-term storage contract. 4.1.5. Assessments Paid for Use of Twin Lakes, Lake Henry/Lake Meredith, Rocky Ford Ditch: During this diligence period, Aurora paid at least the following in annual assessments: \$335,000 for Twin Lakes Company (necessary for storage); \$1,667,000 for the Colorado Canal/Lake Henry/Lake Meredith (necessary for storage); \$1,192,000 for the Rocky Ford Ditch for the shares attributable to the Subject Rocky Ford Ditch Water Right. 4.1.6. Intergovernmental Agreement with SECWCD: On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District (“SECWCD”), replacing an agreement between the parties dated December 7, 2001. Under this new IGA, Aurora and SECWCD agree to support proposed federal legislation relating to the Fryingpan-Arkansas Project to include, among other things, re-operations of the existing water storage facilities, studies for enlargements to Pueblo and Turquoise Reservoirs, and confirming the authority of the Bureau of Reclamation to enter into contracts with Aurora for use of the facilities including long-term contracts. Aurora’s ability to use Fryingpan-Arkansas facilities is expanded under this IGA and Aurora is obligated to make certain payments to SECWCD in consideration for the expanded use. Under this IGA, SECWCD also agrees not to oppose Aurora’s attempts to contract with the Bureau of Reclamation for use of the Fryingpan-Arkansas Project facilities, to facilitate delivery of Aurora’s water, and to settle opposition to each other’s water court applications, including this case. During this diligence period, Aurora made payments of more than \$1,062,000 to SECWCD under this IGA. 4.1.7. Intergovernmental Agreement with LAWCD: Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District (“LAWCD”), Aurora paid approximately \$1,250,000 to LAWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as remediation and restoration efforts in the Fountain Creek Corridor. 4.1.8. Agreements for Use of the Holbrook System Facilities: On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company (“Holbrook”). Aurora and Holbrook extended this agreement on February 2, 2010. These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. Aurora completed structural modifications to the Holbrook system facilities and filed a Substitute Water Supply Plan necessary to implement the program. An Amended Agreement was entered into on April 21, 2016. Further, Aurora initiated a study to examine enlargement of the Holbrook Reservoir to further facilitate operations. During this diligence period, Aurora made payments of approximately \$197,000 to Holbrook under this agreement. 4.1.9. Recovery of Yield (“ROY”): On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in WD-2, Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement (“IGA”) between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo’s RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. This case lays the foundation for those exchanges. In addition, the ROY



participants, including Aurora, have made significant efforts to secure the Arkansas Gravel Pit Reservoir (“AGPR”) or a comparable facility that is necessary for some of the exchanges that are the subject of this Application. Aurora entered into a purchase Option Agreement with LaFarge West, Inc. in 2003 for development of the LaFarge Rich Pit for use by Aurora as the AGPR storage facility upon completion of gravel mining/mineral extraction by LaFarge. This Agreement has been extended several times. The ROY participants have also made efforts to investigate and negotiate alternative storage facilities for the AGPR. Recent negotiations include with Stonewall Springs Ranch and Southwest Sod Farms. Aurora has expended more than \$149,000 on these efforts during the diligence period.

4.1.10. Legal Activities: During the subject diligence period, Aurora spent in excess of \$3,000 on legal activities connected to land use and revegetation concerning the rights transferred in Case No. 99CW169(A), and in excess of \$2,600 on activities connected to follow-up issues in Case No. 99CW169(A) and 99CW170(A).

4.2. System-wide Efforts. Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative rights of exchange originally decreed in Case No. 99CW170(A), diligence as to any part of the Aurora water rights system used to operate or benefiting from these exchanges shall be diligence as to the completion of the exchanges. During this diligence period, Aurora has done at least the following systemwide work that will be used to operate or benefit the remaining conditional exchanges:

4.2.1. Metro Wastewater Reclamation District Charges: Aurora expended at least \$135,784,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for release of this water into the South Platte River Basin. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements.

4.2.2. Sand Creek Water Reuse Plant Improvements: Aurora operates this 5-million-gallon per day facility that provides treated water used for irrigation throughout the City and for discharge into Sand Creek for use as a replacement source for the exchanges herein. Improvements to this facility completed during this diligence period cost at least \$2,947,000. Aurora also expended an additional \$7,090,000 in operating costs for the Sand Creek plant. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements.

4.2.3. Griswold Water Treatment Plant Renovations: This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora’s customers. More than \$3,708,000 was spent by Aurora during this diligence period for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility.

4.2.4. Wemlinger Water Treatment Plant Expansion: During this diligence period, Aurora spent more than \$28,714,000 for improvements to the Wemlinger Water Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora’s customers.

4.2.5. Prairie Waters Project: The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the

South Platte River from Aurora's water sources, including the water that is the subject of the exchanges herein, may be rediverted for subsequent reuse. To facilitate this project Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. During the diligence period, Aurora obtained a decree in Case No. 13CW3088, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW414 (decreed April 22, 2014), Aurora obtained a decree in Case No. 14CW3065, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW415 (decreed March 2, 2015), and Aurora filed an application in Case No. 15CW3064 seeking to make absolute portions of the rights decreed conditionally in Case No. 06CW104, WD-1, and seeking a finding of reasonable diligence on the remainder. Aurora has expended at least \$53,909,000 on several elements of the Prairie Waters Project during this diligence period.

4.2.6. Lawn Irrigation Return Flows (LIRFs) Credits: Aurora obtained a decree in WD-1, Case No. 02CW341, Water Division 1, on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable in-basin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. Water that is transported under the exchanges herein and used in Aurora's service area can be reused under the decree in Case No. 02CW341. During this diligence period, Aurora has expended over \$154,000 in engineering costs requantifying the LIRFs adjudicated in Case No. 02CW341 available for exchange. In addition to the engineering costs, Aurora expended over \$13,000 in legal fees regarding required LIRF requantification studies.

4.2.7. Rampart Reservoir and Delivery System: More than \$14,798,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system. This reservoir is used to store the water that has been exchanged from the Arkansas River Basin and transported to the South Platte River before it is transported through parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines.

4.2.8. Improvements to Extend and Improve Water Service in and to Aurora: More than \$28,242,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchanges herein to Aurora's customers.

4.2.9. Improvements to Sanitary Sewer System: More than \$42,189,000 was spent by Aurora during this diligence period for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchanges herein.

4.2.10. Automated Meter Reading System: Aurora spent more than \$992,000 during this diligence period for updates to its automated utility reading system. This is needed for efficient operation of Aurora's water supply and delivery system, including use of the water that is the subject of the exchanges herein.

4.2.11. Binney Water Purification Facility: This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the City. Over \$15,290,000 was spent by Aurora during the diligence period for improvements to this facility. An additional \$666,000 was spent on the Binney Water Purification Facility filters addition.

4.3. Non-Basin Specific Efforts

4.3.1. Study of Aurora's Water Needs: During this diligence period, Aurora spent more than \$3,414,000 toward engineering

and planning studies to assist in determining the City's future water needs and a plan to meet those needs, including treatment and distribution studies, various conservation studies, and on developing its Non-Potable System Master Plan. 4.3.2. Aurora Raw Water System Model: During this diligence period, Aurora spent more than \$137,000 for consultant fees to develop and support a computer model of Aurora's raw water system. These costs are in addition to the modeling efforts included in the engineering and planning studies identified in paragraph 4.3.1., above. 4.3.3. Protection Efforts: During this diligence period, Aurora spent in excess of \$900,000 participating in water cases in Water Divisions 1 and 2 to protect the rights and interests of Aurora with regard to its water supply system, including the subject exchanges. 4.3.4. Aurora reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Aurora has an extensive water rights portfolio, an extensive and complex water supply, collection, treatment and reuse system, and an extensive number of agreements, contracts, leases, etc. related to its facilities and the use, reuse and storage of its water rights. It is involved in many legal actions related to the collection, treatment, reuse and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous City of Aurora departments and staff members throughout the state. Aurora made diligent efforts with regard to this application to determine and quantify all efforts made by the City toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **5. Claim to Make Absolute:** During this diligence period, Applicant made absolute the following appropriative right of exchange: 5.1. Exchange Reach: Pueblo to Twin Lakes Exchange. See Exhibit B, attached to the Application. 5.1.1. Date: June 10, 2013 to June 13, 2013. 5.1.2. Amount: 250 cfs. 5.1.3. Uses: As described in paragraph 3.7, above. **6. Names and Addresses of Owners of the Land Upon Which Any New Diversion or Storage Structure or Modification to Any Existing Diversion or Storage Structure or Existing Storage Pool Is or Will Be Constructed or Upon Which Water Is or Will Be Stored.** 6.1. Lake Henry/Lake Meredith Outlet Canal: City of Aurora owns shares in both the Lake Henry and Lake Meredith Reservoir Companies, so has a right to use the Outlet Canal. City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora CO 80015-1555. Lake Henry and Lake Meredith Reservoir facilities are owned by the Colorado Canal Companies, 331 Main Street, P.O. Box 8, Ordway, CO 81063. 6.2. Twin Lakes Reservoir, Turquoise Reservoir, Pueblo Reservoir: Owner is U.S. Department of the Interior, Bureau of Reclamation, 11056 W. County Road, 18E, Loveland, CO 80537-9711. 6.3. Clear Creek Reservoir: Owner is Pueblo Board of Public Works, 319 West 4<sup>th</sup> St., Pueblo, CO 81003. 6.4. Otero Pump Station Arkansas River Intake: 50% owned by City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80015-1555. 50% owned by City of Colorado Springs, 121 S. Tejon Street, Colorado Springs, CO 80903. 6.5. AGPR: Owners include Mineral Reserves Inc., 10170 Church Ranch Way, Unit 200, Westminster, CO 80021-6060; Southwest Ready-Mix Inc., 214 29<sup>th</sup> Lane, Pueblo, CO 81006-9348 and 6646 Cramer Road, Alamosa, CO 81101; Stonewall Springs Quarry LLC, 2928 Straus Ln, #210, Colorado Springs, CO 80907 and 3707 Parkmoor Village Drive, Colorado Springs, CO 80917. **7. Prayers for**

**Relief:** Wherefore, Applicant respectfully requests that the Court make absolute the appropriative right of exchange described herein, and find diligence in the development of those portions of the appropriative rights not made absolute, and continue the conditional decree for said structures and remaining conditional amounts for the statutory period, and provide any other relief it finds just and appropriate in these circumstances.

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**CASE NO. 2018CW3032; Previous Case Nos. 1999CW170(B) and 11CW041 - THE CITY OF AURORA, COLORADO, a municipal corporation of the Counties of Adams, Arapahoe, Denver, Douglas and Jefferson, acting by and through its Utility Enterprise (“Aurora” and “Applicant”), 15151 East Alameda Avenue, Suite 3600, Aurora, Colorado 80012-1555** (Please address all pleadings and correspondence regarding this matter to Applicant’s Attorneys: John M. Dingess and Teri L. Petitt, Hamre, Rodriguez, Ostrander & Dingess, P.C., 3600 S. Yosemite Street, Suite 500, Denver, Colorado 80237-1829, phone (303) 779-0200, fax (303) 779-3662, [mail@hrodlaw.com](mailto:mail@hrodlaw.com), [jdingess@hrodlaw.com](mailto:jdingess@hrodlaw.com), [poolteri@hrodlaw.com](mailto:poolteri@hrodlaw.com))

Application for Finding of Reasonable Diligence

**LAKE, CHAFFEE, FREMONT, PUEBLO, CROWLEY AND OTERO COUNTIES.**

**2. Name of Structures:** 2.1. Arkansas Gravel Pit Reservoir (“AGPR”): To be located in of the S½ of Section 34; and a portion of the SW¼ SW¼ of Section 35, Township 20 South, Range 63 West; and a portion of the N½ of Section 3, Township 21 South, Range 63 West of the 6th P.M., all in Pueblo County, Colorado. The AGPR will receive water from the mainstem of the Arkansas River via the Excelsior Ditch, the headgate of which is located in the SE ¼ SE ¼ of Section 36, Township 20 South, Range 64 West of the 6th P.M. in Pueblo County, Colorado. The AGPR will return water to the mainstem of the Arkansas River via a return outlet to be located in the SE ¼ SE ¼ of Section 34, Township 20 South, Range 63 West of the 6th P.M. in Pueblo County, Colorado. 2.2. Box Creek Reservoir: To be located in all or portions of Sections 32 and 33, Township 10 South, Range 80 West and Sections 4 and 5, Township 11 South, Range 80 West of the 6th P.M., all in Lake County, Colorado. The exact location of Box Creek Reservoir Dam is not yet established. The Box Creek dam axis may intersect the approximate centerline of the Box Creek valley at a point approximately 2,000 feet West and 300 feet South of the Northeast corner of said Section 4, Township 11 South, Range 80 West of the 6th P.M. in Lake County, Colorado. 2.3. Arkansas River Intake to Box Creek Reservoir: To be located in Sections 22, 27 and 34, Township 10 South, Range 80 West; and Section 3, Township 11 South, Range 80 West of the 6th P.M., in Lake County, Colorado. 2.4. Upper River Ditch: Located on the west bank of the Arkansas River at point whence the Southeast corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 23° 28’ East, a distance of 2,008.5 feet, in Lake County, Colorado. Water diverted into the Upper River Ditch may be stored in Box Creek Reservoir. 2.5. Derry Ditch No. 1 Headgate: At a point on the Right bank of the Arkansas River whence the quarter-corner of Section 16, Township 10 South, Range 80 West of the 6th P.M. bears South 22° 1’ East, a distance of 3,753 feet, in Lake County, Colorado. Water diverted at the Derry Ditch No. 1 may be stored in Box Creek Reservoir. **3. Description of Conditional Water Rights:** 3.1. Date of Original Decree: July 28, 2005, Case No. 99CW170(B), District Court Water Division 2,

Colorado (“Original Decree”). 3.2. Date of Subsequent Diligence Decree: April 20, 2012, Case No. 11CW041, District Court, Water Division No. 2, Colorado. 3.3. Legal Descriptions: See Paragraph 2, above. 3.4. Sources of Exchange Water: 3.4.1. The water to be exchanged pursuant to the rights that are the subject of this Application is the historical consumptive use water diverted at the Excelsior Ditch and stored in AGPR pursuant to Aurora’s ownership of 288.274 shares of the total 800 outstanding shares of capital stock of the Rocky Ford Ditch Company. The water right represented by the 288.274 shares that are the subject of this Application (“Subject Rocky Ford Ditch Water Right”), is a portion of Priority No. 1, decreed in the original adjudication for former Water District 17, on April 8, 1905, for 111.76 cfs with an appropriation date of May 15, 1874. Pursuant to a previous purchase, Aurora owns 466.48 shares of the Rocky Ford Ditch Company. A change of those shares was decreed in Water Division 2, Case No. 83CW18. A subsequent decree for exchange was issued in Water Division 2, Case No. 87CW63, and those 466.48 shares are not involved in the exchange that is the subject of the Original Decree or this Application. 3.4.2. The Subject Rocky Ford Ditch Water Right was the subject of the Decree in Water Division 2, Case No. 99CW169(A) which case changed, *inter alia*, uses and points of diversion for Applicant’s share of the subject Rocky Ford Ditch Company water. The initial diversion and storage of Applicant’s share of the subject Rocky Ford Ditch Company water is controlled by the terms and conditions of the Decree in Case No. 99CW169(A), which terms and conditions include but are not limited to limitations upon the amount of water transferred based upon revegetation and dry-up status. The terms and conditions of the decree in Case No. 99CW169(A) pertaining to revegetation and dry-up are relevant to this proceeding in that such terms and conditions temporarily limit the volume of water Aurora may divert and store in Pueblo Reservoir, AGPR, Lake Henry or Lake Meredith. Aurora’s right to operate the exchanges decreed under the Original Decree is conditioned upon full compliance with the terms and conditions of the decree in Case No. 99CW169(A). 3.5. Exchange Reaches and Amounts: 3.5.1. From the AGPR Outlet to Arkansas River to the following points: 3.5.1.1. Box Creek Reservoir, 50 cfs; 3.5.1.2. Arkansas River Intake for Box Creek Reservoir, 200 cfs; 3.5.1.3. Upper River Ditch, 200 cfs; 3.5.1.4. Derry Ditch No. 1, 200 cfs. 3.5.2. The rates of exchange listed above are the maximum rates of exchange that shall apply to the sum of any exchanges made pursuant to the exchange rights granted herein and the exchange rights decreed or that may hereafter be decreed in Water Division 2, Case Nos. 87CW63, 99CW170(A), and 01CW145. Amounts exchanged or diverted upstream of Pueblo Reservoir pursuant to Case Nos. 87CW63, 99CW170(A) and 01CW145 will be subtracted from the above stated maximum exchange rates to determine the remaining amount of exchange rate available for the operation of the rights herein decreed. 3.6. Appropriation Date: November 22, 2002. 3.7. Uses: The water exchanged pursuant to this decree may be used for the purposes authorized under the decree in Case No. 99CW169(A) and may be totally consumptively used, successively used, reused and captured for later use. 3.7.1. Direct flow and storage for use, reuse, and successive use to extinction, to the extent historically consumed. 3.7.2. Municipal and domestic purposes, including but not limited to fire protection, sanitary, irrigation, commercial, manufacturing, mechanical and industrial use, recreational purposes, creation and maintenance of wetlands, stock watering, fish and wildlife propagation, allowable in stream uses, if any, snowmaking,

revegetation, storage and maintenance of storage reserves, and to augmentation, exchange and replacement purposes. The water may be totally consumptively used, successively used, reused and recaptured for later use. **4. Detailed Outline of What Has Been Done Toward Completion or for Completion of the Appropriations and Application of Water to a Beneficial Use as Conditionally Decreed.** During the diligence period of May 2012 through April 2018, Aurora performed the following work and made the following expenditures toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use (Expenditure numbers are rounded to the nearest \$1000): 4.1. Project Specific Efforts: Aurora has done at least the following project specific work toward completion of the appropriations and application of the conditional water rights decreed in Case No. 99CW170(B) to beneficial use: 4.1.1. Revegetation: Aurora has expended at least \$1,233,000 during this diligence period for revegetation, including expenditures for expert revegetation classifications and reports, actual revegetation and weed control costs, as well as farm equipment purchases, office overhead and personnel costs, under Case No. 83CW18. Aurora also expended an additional \$982,000 for revegetation and continued farming of historically irrigated lands pursuant to the decree in Case No. 99CW169(A). On June 3, 2014, Aurora entered into an Intergovernmental Agreement with Otero County to clarify between the parties certain terms contained in the 99CW169(A) decree regarding revegetation. 4.1.2. Payment for Rocky Ford Ditch shares: Aurora spent more than \$2,182,000 during this diligence period for repayment of bonds and payments to note sellers, including principal and interest that were issued or refunded for purchase of Applicant's share of the Subject Rocky Ford Ditch Company shares that are the source of the water for the exchanges herein. 4.1.3. Development of Box Creek Reservoir: During this diligence period Aurora has performed the following work toward development of Box Creek Reservoir: 4.1.3.1. Preliminary Design: In March 2011, Aurora entered into a contract with URS Corp. for preliminary design of the river diversion and forebay structures for Box Creek Reservoir. CH2M Hill is currently in the process of completing this design work. Aurora spent over \$2,802,000 for compensation under the contract during the diligence period. 4.1.3.2. Fens Research Project: Prior to this diligence period, Aurora performed background work for a mitigation project for fens wetlands that may be impacted by the proposed reservoir project. Aurora also obtained a substitute water supply plan for replacement of depletions associated with irrigation of the transplanted fens wetlands research project. Aurora spent over \$178,000 in engineering fees for the substitute supply plan. 4.1.3.3. Permitting Issues and Community Relations: Aurora paid \$247,000 for professional services for investigation of permitting and community relations issues associated with Box Creek Reservoir. 4.1.3.4. Historic American Building Survey: Aurora continued to work with the Colorado Mountain College for their performance of an Historic American Building Survey explaining the cultural resources at the proposed reservoir site. During this diligence period, Aurora paid Colorado Mountain College over \$10,000 for this survey. 4.1.4. Application in Case No. 01CW145, WD-2: On October 30, 2012, Aurora obtained a decree in Case No. 01CW145, Water Division 2, decreeing appropriate rights of exchange on the Arkansas River that include Box Creek Reservoir, the Arkansas River Intake and the Upper River Ditch as exchange point structures and the Subject Rocky Ford Ditch Water Right as one of the sources of replacement water.

This is diligence work related to the water rights at issue herein because it integrates these structures and the Rocky Ford replacement source more fully into Aurora's interconnected Arkansas Basin water supply network. 4.1.5. Agreements for Use of the Holbrook System Facilities. On March 1, 2005, Aurora entered into two agreements pertaining to the use of the diversion, conveyance and storage facilities of the Holbrook Mutual Irrigating Company ("Holbrook"). Aurora and Holbrook extended this agreement on February 2, 2010. These agreements implement a program to recapture and store yield from foregone diversions of senior water rights. Aurora completed structural modifications to the Holbrook system facilities and filed a Substitute Water Supply Plan necessary to implement the program. An Amended Agreement was entered into on April 21, 2016. Further, Aurora initiated a study to examine enlargement of the Holbrook Reservoir to further facilitate operations. During this diligence period, Aurora made payments of approximately \$197,000 to Holbrook under this agreement. 4.1.6. Intergovernmental Agreement with SECWCD: On October 3, 2003, Aurora entered into an Intergovernmental Agreement with the Southeastern Colorado Water Conservancy District ("SECWCD"), replacing an agreement between the parties dated December 7, 2001. Under this new IGA, Aurora and SECWCD agree to support proposed federal legislation relating to the Fryingpan-Arkansas Project to include, among other things, re-operations of the existing water storage facilities, studies for enlargements to Pueblo and Turquoise Reservoirs, and confirming the authority of the Bureau of Reclamation to enter into contracts with Aurora for use of the facilities including long-term contracts. Aurora's ability to use Fryingpan-Arkansas facilities is expanded under this IGA and Aurora is obligated to make certain payments to SECWCD in consideration for the expanded use. Under this IGA, SECWCD also agrees not to oppose Aurora's attempts to contract with the Bureau of Reclamation for use of the Fryingpan-Arkansas Project facilities, to facilitate delivery of Aurora's water, and to settle opposition to each other's water court applications, including this case. During this diligence period, Aurora made payments of more than \$1,062,000 to SECWCD under this IGA. 4.1.7. Recovery of Yield ("ROY"): On August 17, 2016, Aurora, along with Colorado Springs, the Pueblo Board of Water Works, the City of Fountain, and the Southeastern Colorado Water Conservancy District, obtained a decree in WD-2, Case No. 06CW120 adjudicating exchanges necessary as a result of the 2004 Regional Intergovernmental Agreement ("IGA") between the various water providers and the City of Pueblo, whereby the water providers agreed to allow certain of their senior flows to pass through Pueblo's RICD reaches on the condition those flows could be removed downstream and exchanged back upstream. This case lays the foundation for those exchanges. In addition, the ROY participants, including Aurora, have made significant efforts to secure the Arkansas Gravel Pit Reservoir ("AGPR") or a comparable facility that is necessary for some of the exchanges that are the subject of this Application. Aurora entered into a purchase Option Agreement with LaFarge West, Inc. in 2003 for development of the LaFarge Rich Pit for use by Aurora as the AGPR storage facility upon completion of gravel mining/mineral extraction by LaFarge. This Agreement has been extended several times. The ROY participants have also made efforts to investigate and negotiate alternative storage facilities for the AGPR. Recent negotiations include with Stonewall Springs Ranch and Southwest Sod Farms. Aurora has expended more than \$149,000 on these efforts during the diligence period. 4.1.8. Intergovernmental Agreement with

LAWCD: Pursuant to an Intergovernmental Agreement with the Lower Arkansas Valley Water Conservation District (“LAVWCD”), Aurora paid approximately \$1,250,000 to LAVWCD for the identification and implementation of infrastructure improvements, research, and investigations designed to assist in the permitting or implementation of water leasing programs in the Lower Arkansas Valley, as well as remediation and restoration efforts in the Fountain Creek Corridor. 4.1.10. Payments to Otero County: Aurora and Otero County entered into an Intergovernmental Agreement on February 22, 1994, and amended that Agreement on October 29, 2001 under which Amendment Aurora agreed to make annual payments to Otero County concerning the Rocky Ford Ditch shares that are a reusable source for the exchanges herein. During the diligence period, Aurora made payments in excess of \$209,000. 4.1.10. Pueblo Reservoir Storage: During the diligence period, Aurora paid the Bureau of Reclamation more than \$2,816,000 for use of Pueblo Reservoir in the storage and exchange of Arkansas River Basin water upstream for transport and use by Aurora in the South Platte Basin. 4.1.11. Legal Activities: During the subject diligence period, Aurora spent in excess of \$3,000 on legal activities connected to land use and revegetation concerning the rights transferred in Case No. 99CW169(A), and in excess of \$2,700 on legal activities connected to follow-up issues in Case No. 99CW169(A) and 99CW170(B). 4.2. Systemwide Efforts. Pursuant to the Original Decree, these exchanges are part of a unified extensive system for the collection, treatment and distribution of water operated by Aurora. For the purposes of showing diligence as to completion of the appropriative right of exchanges originally decreed in Case No. 99CW170(B), diligence as to any part of the Aurora water rights system used to operate or benefiting from these exchanges shall be diligence as to the completion of the exchanges. During this diligence period, Aurora has done at least the following system-wide work that will be used to operate or benefit the conditional exchanges: 4.2.1. Metro Wastewater Reclamation District Charges: Aurora expended at least \$135,783,000 during this diligence period for fees for wastewater treatment of its water at the Metro Wastewater Reclamation facility. Such treatment is necessary for release of this water into the South Platte River Basin. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements. 4.2.2. Sand Creek Water Reuse Plant Improvements: Aurora operates this 5-million-gallon per day facility that provides treated water used for irrigation throughout the City and for discharge into Sand Creek for use as a replacement source for the exchanges herein. Improvements of this facility completed during this diligence period cost at least \$2,947,000. Aurora also expended an additional \$7,090,000 in operating costs for the Sand Creek plant. This work is necessary for reuse within the South Platte River Basin of the water that is the subject of the exchanges herein and also to comply with water reuse requirements. 4.2.3. Griswold Water Treatment Plant Renovations: This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora’s customers. More than \$3,708,000 was spent by Aurora during this diligence period for improvements to this facility necessary to accommodate the water that is the subject of the exchanges herein. This includes expenditures directly by Aurora for renovation of the facility. 4.2.4. Wemlinger Water Treatment Plant Expansion: During this diligence period, Aurora spent more than \$28,714,000 for improvements to the Wemlinger Water



Treatment Plant. This facility treats a portion of the raw water exchanged under the Original Decree and then transported to the South Platte Basin and to Aurora, before it is delivered to Aurora's customers.

4.2.5. Prairie Waters Project: The Prairie Waters Project is a large comprehensive water supply, storage and treatment project in which return flows to the South Platte River from Aurora's water sources, including the water that is the subject of the exchanges herein, may be rediverted for subsequent reuse. To facilitate this project Aurora obtained various decrees in Case Nos. 06CW104, 03CW414, and 03CW415, Water Division 1. This project allows further reuse of much of the water decreed to Aurora. During the diligence period, Aurora obtained a decree in Case No. 13CW3088, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW414 (decreed April 22, 2014), Aurora obtained a decree in Case No. 14CW3065, WD-1, finding reasonable diligence for the water rights decreed conditionally in 03CW415 (decreed March 2, 2015), and Aurora filed an application in Case No. 15CW3064 seeking to make absolute portions of the rights decreed conditionally in Case No. 06CW104, WD-1, and seeking a finding of reasonable diligence on the remainder. Aurora has expended at least \$53,909,000 on several elements of the Prairie Waters Project during this diligence period.

4.2.6. Lawn Irrigation Return Flows (LIRFs) Credits: Aurora obtained a decree in WD-1, Case No. 02CW341 on September 25, 2008, quantifying LIRFs from its municipal system (and subsequent requantifications as required by the Decree in 02CW341), generated as a result of use of transmountain water rights, fully consumable in-basin water rights, decreed and permitted non-tributary sources and any other fully consumable water available to Aurora. Water that is transported under the exchanges herein and used in Aurora's service area can be reused under the decree in Case No. 02CW341. During this diligence period, Aurora has expended over \$154,000 in engineering costs requantifying the LIRFs adjudicated in Case No. 02CW341 available for exchange. In addition to the engineering costs, Aurora expended over \$13,000 in legal fees regarding required LIRF requantification studies.

4.2.7. Rampart Reservoir Improvement: More than \$14,798,000 was spent by Aurora during this diligence period for improvements to the Rampart Reservoir delivery system. This reservoir is used to store the water that has been exchanged from the Arkansas River Basin and transported to the South Platte River before it is transported through parallel 54" and 40" pipelines to Aurora. Rampart Reservoir is important for regulation of the flow through these parallel pipelines.

4.2.8. Improvements to Extend and Improve Water Service in and to Aurora: More than \$29,242,000 was spent by Aurora during this diligence period for extension and upgrade of its water transmission system necessary to deliver the water that is the subject of the exchanges herein to Aurora's customers.

4.2.9. Improvements to Sanitary Sewer System: More than \$42,189,000 was spent by Aurora during this diligence period for extension and upgrade of its sanitary sewer system necessary for wastewater treatment and reuse within the South Platte River Basin of the water that is the subject of the exchanges herein.

4.2.10. Automated Meter Reading System: Aurora spent more than \$992,000 during this diligence period for updates to its automated utility reading system. This is needed for efficient operation of Aurora's water supply and delivery system, including use of the water that is the subject of the exchanges herein.

4.2.11. Binney Water Purification Facility: This state-of-the-art water purification and recycling plant owned and operated by Aurora treats water for use throughout the City. Over

\$15,290,000 was spent by Aurora during the diligence period for improvements to this facility. 4.3. Non-Basin Specific Efforts. 4.3.1. Study of Aurora's Water Needs: During this diligence period, Aurora spent more than \$3,414,000 toward engineering and planning studies to assist in determining the City's future water needs and a plan to meet those need, including treatment and distribution studies, various conservation studies, and on developing its Non-Potable System Master Plan. 4.3.2. Aurora Raw Water System Model: During this diligence period, Aurora spent more than \$137,200 for consultant fees to develop and support a computer model of Aurora's raw water system. These costs are in addition to the modeling efforts included in the engineering and planning studies identified in paragraph 4.3.1., above. 4.3.3. Protection Efforts: During this diligence period, Aurora spent in excess of \$900,000 participating in water cases in Water Divisions 1 and 2 to protect the rights and interests of Aurora with regard to its water supply system, including the subject exchanges. 4.3.4. Aurora reserves the right to identify additional relevant efforts that may be later discovered or to make upward adjustments to amounts expended on certain projects. Aurora has an extensive water rights portfolio, an extensive and complex water supply, collection, treatment and reuse system, and an extensive number of agreements, contracts, leases, etc. related to its facilities and the use, reuse and storage of its water rights. It is involved in many legal actions related to the collection, treatment, reuse and protection of its water rights. Further, the management, protection, and operation of the water rights and the facilities system involve numerous City of Aurora departments and staff members throughout the state. Aurora made diligent efforts with regard to this application to determine and quantify all efforts made by the City toward completion of the appropriations and application of the water rights decreed in the Original Decree to beneficial use. However, it is reasonably possible that relevant efforts or expenditures may have been overlooked or need further upward adjustment. **5. Names and Addresses of Owners of the Land Upon Which Any New Diversion or Storage Structure or Modification to Any Existing Diversion or Storage Structure or Existing Storage Pool Is or Will Be Constructed or Upon Which Water Is or Will Be Stored.** 5.1. Box Creek Reservoir. The Reservoir is proposed to be built on Hallenbeck Ranch lands, owned by the City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555. Depending on the final reservoir configuration and location, it may also inundate lands owned by the U.S. Forest Service, P.O. Box 970, Leadville, CO 80461; the State of Colorado, 1313 Sherman St, Rm 618, Denver, CO 80203; and additional private entities: Dennis Smith, 4961 South Boston Street, Greenwood Village, CO 80111; Bobby and Jolene Wood, P.O. Box 1351, Leadville, CO 80461; Terry and Susan Speicher, 2262 King James Court, Winter Park, FL 32790; and Mt Elbert Mining Company LLC, 32460 Inverness Drive, Evergreen, CO 80439. 5.2. Arkansas River Intake for Box Creek Reservoir. City of Aurora, 15151 East Alameda Street, Suite 3600, Aurora, CO 80012-1555. State of Colorado, Division of Parks, 1313 Sherman Street, Denver, CO 80203. 5.3. Upper River Ditch headgate. State of Colorado, 1313 Sherman Street, Suite 620, Denver, CO 80203. 5.4. Derry Ditch No. 1 headgate. Bernard Smith, DVM, 134 County Road 44, Leadville, CO 80461. 5.5. AGPR. Mineral Reserves Inc., 10170 Church Ranch Way, Unit 200, Westminster, CO 80021-6060. Southwest Ready-Mix Inc., 214 29<sup>th</sup> Lane, Pueblo, CO 81006-9348. Stonewall Springs Quarry LLC, 2928 Straus Ln, #210, Colorado Springs, CO 80907. **6. Prayers for Relief:** Wherefore,

Applicant respectfully requests that the Court find diligence in the development of the appropriative rights described herein, and continue the conditional decree for said structures and conditional amounts for the statutory period, and provide any other relief it finds just and appropriate in these circumstances.

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**CASE NO. 2018CW3033 - SHEEP CAMP HOLDINGS, LLC, 11 Times Square, 37<sup>th</sup> Floor, New York, NY 10036** (Please address all pleadings and correspondence to

Applicant’s attorneys: Lee H. Johnson, Mason H. Brown, and Katrina B. Fiscella, Carlson, Hammond & Paddock, L.L.C., 1900 Grant Street, Suite 1200, Denver, Colorado 80203-4539, Phone Number: (303) 861-9000, Fax Number: (303) 861-9026  
 Application for Change of Water Right and Approval of Plan of Augmentation

**LAS ANIMAS COUNTY, COLORADO**

**2. Decreed water right for which change is sought:** Applicant’s interest in the Valerio and Torres Water Right, previously changed and quantified in Case No. 83CW131. The Applicant is the owner of 3.4 c.f.s. out of the total 5.0 c.f.s. originally decreed to the Valerio and Torres Water Right. Applicant’s 3.4 c.f.s. interest is referred to herein as the “Subject Water Rights.” The entire 5.0 c.f.s. of the Valerio and Torres Water Right was the subject of the change of use decree in Case No. 83CW131. The remaining 1.6 c.f.s. of the Valerio and Torres water right is not owned by Sheep Camp. On information and belief, the 1.6 c.f.s. interest is owned by Hill Ranch, Ltd., and was the subject of a change application and plan for augmentation in Case No. 08CW38. This application only involves the Subject Water Rights. Applicant, and its related entities, are the owners of the Sheep Camp Ranch and the Tercio Ranch, collectively referred to herein as the “Property.” **A. Name of Structures:** The Consolidated Ditch (a.k.a. Maxwell Ditch No. 20), Sheep Camp #3 Pond, Sueno Lake (a.k.a. Sueno Reservoir or Swano Lake), Tercio Lodge Pond, Tercio Lodge Forebay, Tercio Headquarters Pond, Tercio Pump Station North, Tercio Pump Station South, the Consolidated Ditch Headgate Augmentation Station and the Consolidated Ditch Sheep Camp Augmentation Station. **B. Date of original decree:** The Subject Water Rights were changed and quantified in the decree entered on September 16, 1985, in Case No. 83CW131, Water Division No. 2. The original decretal information for the Valerio and Torres right, including the Subject Water Rights, is as follows:

VALERIO AND TORRES WATER RIGHT							
Date Entered	Case No.	District Court	Amount (cfs)	Appropri. Date	Priority No.	Name	Source
8/10/1903	N/A	Las Animas	5.0	5/30/1866	Dist. Pri. 26 South Fork Pri. 2	Valerio and Torres	South Fork of the Purgatoire River
4/10/1920	8653*	Las Animas	5.0	Same	Same	Same	Same

Notes:

\* Transfer decree to the headgate of the Consolidated Ditch (aka Maxwell No. 20 Ditch).

**C. Legal description of structures:** 1. Original Decreed Point of Diversion: On the northeast side of the South Fork of the Purgatoire River on lands claimed by Sisto Trujillo near a large blazed pine tree southwest from the dam. 2. Decreed Point of Diversion as Transferred: At the Maxwell No. 20 Ditch headgate (a.k.a. Consolidated

Ditch Headgate) located on the north bank of the South Fork of the Purgatoire River in the NE1/4 of Section 22, Township 34 South, Range 69 West, 6<sup>th</sup> P.M., Las Animas County, Colorado. This ditch is also known as the Consolidated Ditch. (Applicant provides the following UTM coordinates for the approximate location of the Consolidated Ditch headgate: NAD 83, Zone 13 North (meters)<sup>2</sup>: 492401 E, 4103182 N)

**D. Decreed source of water:** South Fork of the Purgatoire River. **E. Appropriation Date:** May 30, 1866. **F. Decreed uses:** The original decreed use for the Valerio and Torres Water Right was irrigation. As noted above, the entirety of Valerio and Torres Water Right was transferred to the Consolidated Ditch Headgate in 1920 in Case No. 8653, Las Animas County District Court. Subsequently, the entire Valerio and Torres Water Right, (including that portion that makes up the Subject Water Rights), was the subject of a change of use proceeding in Case No. 83CW131. In that proceeding, the Valerio and Torres Water Right, (including the Subject Water Rights), was changed and quantified to authorize a variety of other uses in addition to the original use of irrigation. Under the terms of the change decree entered in Case No. 83CW131, the Subject Water Rights can be “used to extinction for all beneficial uses including municipal, domestic, industrial, commercial, irrigation, stock watering, recreation and fish and wildlife. Such water may be utilized for immediate application to said uses, for storage and subsequent application to said uses, for exchange purposes, for replacement of depletions resulting from the use of the water from other sources, and for all other augmentation purposes.” The decree in Case No. 83CW131 further provided that “said beneficial uses are restricted to the Purgatoire River Basin at or above the Trinidad Reservoir Dam.” All of Applicant’s proposed uses contemplated in this Application arise at or above the Trinidad Reservoir Dam. The decree in Case No. 83CW131 analyzed the historical consumptive use associated with the relevant water rights and, as to the entirety of the Valerio and Torres Water Right, established the following annual consumptive use limits. The table below also shows the annual consumptive use limits applicable to the Subject Water Rights, based on Sheep Camp’s pro-rata ownership amounts:

<b>CONSUMPTIVE USE LIMITS</b>			
<b>Water Right</b>	<b>Annual CU Maximum</b>	<b>Annual CU Average</b>	<b>10-Year Running Average</b>
Total Valerio and Torres Water Right	700 a.f.	350 a.f.	3,500 a.f.
Subject Water Rights pro-rata portion of total	476 a.f.	238 a.f.	2,380 a.f.

The decree in Case No. 83CW131 also established the following monthly diversion limits for the Valerio and Torres Water Right. The table below also shows the monthly diversion limits applicable to the Subject Water Rights, based on Sheep Camp’s pro-rata ownership amounts:

<sup>2</sup> All UTM coordinates listed herein are provided as NAD 83, Zone 13 North, meters.

DIVERSION LIMITS					
Water Right	Decreed Rate	Max Rate of Diversion May	Max Rate of Diversion June	Max Rate of Diversion July	Max Rate of Diversion August
Total Valerio and Torres Water Right	5 c.f.s.	4 c.f.s.	4 c.f.s.	4 c.f.s.	2 c.f.s.
Subject Water Rights pro-rata portion of total	3.4 c.f.s.	2.72 c.f.s.	2.72 c.f.s.	2.72 c.f.s.	1.36 c.f.s.

Under the terms of the change of use decree in Case No. 83CW131, the diversion season for the Subject Water Rights is limited to May 1 through August 31 each year. Under the terms of the change of use decree in Case No. 83CW131, water attributed to the Subject Water Rights is subject to the diversion and consumptive use limits set forth above. Any such diverted water may be used to extinction for all beneficial uses identified in the decree in Case No. 83CW131. Sheep Camp seeks to use the Subject Water Rights, and the historical consumptive use credits generated thereby, for the purposes contemplated in this Application and as augmentation credits in the plan for augmentation, discussed below, in a manner consistent with the consumptive use limits, the diversion limits and the diversion season limits set forth in the decree in Case No. 83CW131. The historical consumptive use (“HCU”) determinations made in Case No. 83CW131 for the entirety of the Valerio and Torres Water Right have been utilized in subsequent change of use cases. In Case No. 08CW38, Hill Ranch, Ltd., changed the use of its 1.6 c.f.s. interest in the Valerio and Torres Water Right in conformance with the HCU determinations from Case No. 83CW131. In addition, in Case No. 02CW156, Siegfried and Anna L. Weiler changed the use of their 0.25 c.f.s. interest in the Valerio and Torres Water Right for uses associated with Sueno Lake and, in so doing, applied the HCU determinations from Case No. 83CW131. In 2014, by deed recorded at Reception No. 201400723803 in the Las Animas County Clerk and Records Office, Siegfried and Anna L. Weiler conveyed their interests in the decree in Case No. 02CW156, the 0.25 c.f.s. interest in the Valerio and Torres Water Right and Sueno Lake itself, to Sheep Camp Holdings, LLC. Applicant does not intend to make any changes to the decree issued in Case No. 02CW156, but may seek to incorporate the accounting requirements from Case No. 02CW156 into the accounting utilized in connection with this application. **G. Amount of water that applicant intends to change:** The entirety of the Subject Water Rights; namely Sheep Camp’s ownership of 3.4 c.f.s. of the Valerio and Torres Water Right. **3. Detailed description of proposed change:** The Subject Water Rights were previously changed and quantified by North Central Energy Company and Wyoming Fuel Company in Case No. 83CW131. In accordance with Senate Bill 15-183, and the provisions of C.R.S. §37-92-305(3)(e), Sheep Camp will rely on the prior court determinations of HCU made in Case No. 83CW131 and seeks no changes to the previously determined measure of the Subject Water Rights, the

volumetric limits, diversion limits or season of use limits as set forth in the decree in said Case No. 83CW131, as described in paragraph 2, above. In addition to the uses authorized under the decrees in Case No. 83CW131 and Case No. 02CW156, Sheep Camp seeks a change of use decree authorizing and confirming the additional types of uses and places of use contemplated herein, including use of the Subject Water Rights for irrigation of the Property, storage and augmentation purposes. When in priority, the Subject Water Rights will be diverted at the headgate of the Consolidated Ditch and utilized within the Consolidated Ditch system, or alternatively, measured and returned to the South Fork of the Purgatoire River at any of the augmentation stations identified herein and re-diverted downstream for direct use or storage purposes, or left in the stream for augmentation purposes as described in paragraph 4, below. Re-diversion may occur at points upstream of Trinidad Reservoir, including, but not limited to, the Tercio Pump Station South and/or Tercio Pump Station North generally located at the following UTM coordinates: 498261 E, 4103031 N and 497921 E, 4103335 N, respectively. The proposed new places of storage of the Subject Water Rights located on the Property include, but are not limited to, the Tercio Lodge Pond, the Tercio Lodge Forebay, the Tercio Headquarters Pond, Sheep Camp Pond #3 and Sueno Lake, all located as described in paragraph 4, below. Maps of the Property and the relevant structures are attached to the Application as Exhibits A and B. (All exhibits mentioned herein are incorporated by reference and may be inspected at the office of the clerk of this Court.) As noted above, the historical consumptive use of the Subject Water Rights was previously quantified in Case No. 83CW131. Relevant maps and diversion records associated with said quantification were attached to the application in Case No. 83CW131. Under the terms of the decree in Case No. 83CW131, the Water Court ruled that any diversions of the water rights at issue in that case, including the Subject Water Rights that subsequently were conveyed to the Applicant, were fully consumable and could be used to extinction. Based on the determinations in Case No. 83CW131, the amounts that may be diverted on the Subject Water Rights are fully consumable and no additional return flow obligations are attributable to these rights. Consistent with the findings in Case No. 83CW131, Sheep Camp asserts it has the right to use, reuse, and successively use the Subject Water Rights to extinction for all beneficial purposes identified herein, either by direct release or storage for later release with the right to totally consume the consumable portion of the water either by first use, successive use, or disposition to third parties. Sheep Camp intends to maintain dominion and control over the Subject Water Rights and, to this end, expressly appropriates any and all return flows generated by the use of the Subject Water Rights. Sheep Camp is not, however, seeking to quantify the fully consumable lawn irrigation return flow and ditch loss amounts in this Application, but reserves the right to quantify and utilize any such fully consumable returns in a subsequent, separate application. **4. Plan for Augmentation.** By this Application, Sheep Camp seeks to utilize a portion of the HCU credits generated by the previously changed Subject Water Rights to augment out of priority storage, if any, associated with the Tercio Lodge Pond, the Tercio Lodge Forebay, the Tercio Headquarters Pond and Sheep Camp #3 Pond, all located on the Property.<sup>3</sup> Applicant intends to fill the above named structures in priority and, once filled,

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<sup>3</sup> Sueno Lake is also located on the Property and is the subject of a previously decreed augmentation plan in Case No. 02CW156. As noted in paragraph 2, above, Applicant now owns the

maintain them in a full state the remainder of the year. Under the operations contemplated herein, once filled, any out of priority storage associated with these vessels will be limited to the rate of evaporative losses occurring during the year. Notwithstanding the actual conditions (unless completely empty for operational or maintenance reasons), Sheep Camp conservatively assumes that the storage structures at issue are always full and any evaporative losses are always out of priority. Based on these conservative assumptions, Sheep Camp intends to replace any out of priority storage associated with the following structures with centroids located approximately at the following UTM coordinates: A. Tercio Lodge Pond -- 498576 E, 4103264 N. B. Tercio Lodge Forebay -- 498516 E, 4103373 N. C. Tercio Headquarters Pond -- 497971 E, 4103502 N. D. Sheep Camp #3 Pond -- 496003 E, 4106952 N. The amounts of required replacement are conservatively assumed to be the following on an annual basis:

Pond Surface Area and Evaporation Calculations					
Pond Name	Tercio Lodge Pond	Tercio Lodge Forebay	Tercio Headquarters Pond	Sheep Camp #3 Pond	Total
Surface Area (Acres)	1.09	0.05	0.07	2.00	3.21
Annual Evaporation (Acre Feet)	3.61	0.17	0.23	6.62	10.63

The annual evaporation amounts set forth above are gross evaporative loss calculations, less ice-cover months of December through February. (Monthly evaporation amounts are set forth in Exhibit C attached to the Application). As noted above, the ponds will be assumed to be full on a year-round basis for purposes of calculating potential replacement obligations. Any additional water stored in the ponds outside of the diversion season for the Subject Water Rights will be assumed to be out of priority storage that requires replacement. Applicant intends to utilize Sueno Lake to make augmentation replacement releases. A staff gauge and other appropriate measurement device as required by the Division Engineer will be utilized to measure and account for augmentation releases from Sueno Lake. Sueno Lake, as described in the decree in Case No. 02CW156, is an “an off-channel reservoir located in Sections 20, 29, and 30, Township 33 South, Range 68 West of the 6<sup>th</sup> P.M., Las Animas County, Colorado.” The approximate UTM coordinates for the centroid of Sueno Lake are as follows: 497405 E, 4110831 N. Applicant reserves the right, if required, to utilize other storage vessels for augmentation replacement releases, subject to the need to appropriately measure and account for any such releases. Any such storage vessels will be located on Applicant’s, or Applicant’s affiliate entities’, lands. Under the plan for augmentation, storage of HCU credits associated with the Subject Water Rights in Sueno Lake for return to the Purgatoire River drainage may be released to compensate for out of priority replacement obligations. In addition, when in priority at the Consolidated Ditch Headgate, Sheep Camp may also directly return a portion of the

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decree in Case No. 02CW156, as well as the contract rights for use of the Consolidated Ditch Headgate Augmentation Station associated with that decree. Applicant does not intend to reopen or otherwise revise the decree in Case No. 02CW156, but does intend to utilize Sueno Lake to make augmentation water releases as contemplated herein.

HCU credits associated with the Subject Water Rights to the South Fork of the Purgatoire River through an augmentation station, or to the Middle Fork of the Purgatoire River after carriage through the Consolidated Ditch system. UTM coordinates representing the approximate location of the Consolidated Ditch Headgate Augmentation Station are as follows: 492428 E, 4103168 N. Water is measured in a flume and returned to the South Fork of the Purgatoire River at approximately the following UTM coordinates: 492443 E, 4103130 N. The Consolidated Ditch Sheep Camp Augmentation Station will measure a portion of Applicant's Consolidated Ditch water prior to its release to the South Fork of the Purgatoire River at a point generally located as follows (UTM coordinates): 495813 E, 4103572 N. This Augmentation Station will be located on lands owned by the Applicant. It will release water to the South Fork of the Purgatoire River either directly, or stored as needed prior to release. Releases of water from storage may occur at any time, but will in particular be used to satisfy augmentation obligations to the Purgatoire River basin when the Subject Water Rights are out of priority or otherwise unable to be diverted and returned directly. In accordance with C.R.S. § 37-92-305(8)(c), Sheep Camp will seek to include in any decree entered herein a procedure to allow additional or alternative sources of replacement water, including water leased on a yearly or less frequent basis, to be used in the plan after the initial decree is entered if the use of said additional or alternative sources is part of a substitute water supply plan approved pursuant to section 37-92-308, or if such sources are decreed for such use. **5. Name(s) and address(es) of owner(s) of land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool. The applicant must notify these persons that the applicant is applying for this water right, and certify to the Court that the applicant has done so.** Not applicable. The structures identified herein are existing structures or are or will be located entirely on Applicant's, or Applicant's affiliate entities', lands. The Applicant does not seek a new diversion or storage structure, or modification of an existing diversion or storage structure located on lands it does not own.

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THE WATER RIGHTS CLAIMED BY THE FOREGOING APPLICATION(S) MAY AFFECT IN PRIORITY ANY WATER RIGHTS CLAIMED OR HERETOFORE ADJUDICATED WITHIN THIS DIVISION AND OWNERS OF AFFECTED RIGHTS MUST APPEAR TO OBJECT AND PROTEST WITHIN THE TIME PROVIDED BY STATUTE, OR BE FOREVER BARRED.

YOU ARE HEREBY NOTIFIED that any party who wishes to oppose an application, or application as amended, may file with the Water Clerk a verified statement of opposition setting forth facts as to why the application should not be granted, or why it should be granted only in part or on certain conditions, such statement of opposition must be filed by the last day of June 2018, (forms available at Clerk's office or at [www.courts.state.co.us](http://www.courts.state.co.us), after serving parties and attaching a certificate of mailing, filing fee \$158.00). The foregoing are resumes and the entire application, amendments, exhibits, maps and any other attachments filed in each case may be examined in the office of the Clerk for Water Division No. 2, at the address shown below.



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Witness my hand and the seal of this Court this 7th day of May, 2018.



*Mardell R. DiDomenico*

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Mardell R. DiDomenico, Clerk  
District Court, Water Div. 2  
Pueblo Judicial Building  
501 N. Elizabeth Street, Suite 116  
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(Court seal)  
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